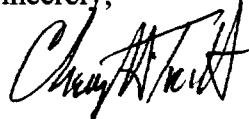


MORRISON & FOERSTER LLP

Ms. Magalie Roman Salas
November 5, 1998
Page Two

An original and one copy of this letter have been submitted to the Secretary of the Commission for inclusion in the public record, as required by Section 1.1206(b)(2) of the Commission's rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl A. Tritt", written in a cursive style.

Cheryl A. Tritt
Counsel for Telecommunications
Management Information Systems Coalition

Attachments

cc: Chairman Kennard (w/o attachments)
Kathryn Brown (w/o attachments)

TARIFF FORBEARANCE
CC Docket No. 96-61
NOVEMBER 4, 1998
EX PARTE PRESENTATION

TMIS and TRAC

- ⊗ The Telecommunications Management Information Systems Coalition is composed of three companies formed for the purpose of participating in this proceeding — Salestar, CCMI and Tele-Tech. These companies are small businesses of long standing that have provided essential pricing information to their customers for the past 10-25 years. They all gather on behalf of their customers publicly available pricing information and then abstract this information or create databases and various software pricing tools utilizing this information.
- ⊗ Telecommunications Research Action Center is a tax-exempt consumer education and advocacy organization based in Washington, DC. For the last ten years, TRAC has published *Tele-Tips*, a periodic newsletter that provides comprehensive consumer information and rate comparisons on interstate long distance telephone service.

FCC ACTION SOUGHT

The Coalition and TRAC urge the Commission to reinstitute its earlier-adopted public disclosure requirement for mass market services.

- ⊗ Elimination of the information disclosure requirement is contrary to the public interest. Many consumer-oriented groups have filed in this proceeding, arguing that information disclosure is critical. These groups include The Utility Reform Network, Consumer Action/CFA, the National Consumers League, the National Association of Attorneys General, the State of Maryland People's Counsel, the Colorado PUC, the State of New Hampshire Office of the Consumer Advocate, the Utility Consumers Action Network, the West Virginia PSC, and the State of South Carolina Department of Consumer Affairs.
 - ⊗ Without information, consumers cannot obtain sufficient information to make informed decisions about complex choices available from multitude of carriers. NARUC adopted a resolution on July 29, 1998 urging policy makers to ensure that consumers have sufficient information to understand and make informed choices regarding their telecommunications services.
 - ⊗ Small to medium-sized business and residential customers especially need this information given the difficulty of obtaining it independently.
-

- ⊗ Information gathered and distributed to customers by the Coalition includes not only rates, but also charges such as the SLC, PICC, and Universal Service pass-through, which is helpful for both consumers and regulators, because without tariffs, these charges (and their calculation methodologies) are not always apparent on customer bills. TRAC collects and distributes similar information to consumers.

Billing and marketing materials are not sufficient.

- ⊗ Billing information is available only to existing customers, not potential customers making initial service decisions.
- ⊗ Bills are notoriously inaccurate and difficult to understand — a National Regulatory Research Institute study shows between 20-25% of survey respondents reported billing errors in past 12 months, with a majority involving long distance billing problems.
- ⊗ Marketing materials are incomplete at best, because carriers advertise only the services they have targeted for specific customers.
- ⊗ Marketing materials are inaccurate or confusing at worst. A National Consumers League study showed 71% of survey participants found telecommunications advertising to be “confusing,” with 28% finding it “very confusing.”

Without consumer disclosure information, the FCC cannot enforce Section 254(g).

- ⊗ FCC’s initial decision concluded that publicly available information was necessary for this purpose, and that carrier certifications were insufficient.
- ⊗ Without additional information on record, FCC reversed course.
- ⊗ Although FCC and state agencies can obtain this information, they have limited resources and must rely upon public as guardians of complaint process.
- ⊗ Many states that have implemented partial detariffing have continued to require some sort of price list, *e.g.*, Delaware, Oregon, Arizona, New Mexico, Colorado, Washington, and Connecticut, which indicates that the availability of this information still serves important enforcement purposes.
- ⊗ At the same time as information is limited, FCC has raised the threshold for pleading formal complaints, further limiting likelihood of effective enforcement by public.

FCC concerns about price coordination are not eliminated by abandoning the information disclosure requirement.

- ⊗ In a competitive market more information helps the market to function more efficiently. The FCC has long characterized the long distance market as robustly competitive.
- ⊗ FCC also acknowledged that large and sophisticated competitors will still be able to obtain each other's pricing information. Elimination of information disclosure thus fails to address any threat (if any exists) of price collusion but deprives consumers served by TRAC of access to this important information.
- ⊗ Disclosure of actual current prices is highly unlikely to serve as a vehicle to coordinate prices in any event because it provides no advance assurance that competitors would follow any price increase. For example, when DOJ investigated and settled allegations of airline price fixing, the settlement prohibited the dissemination of pricing information for fares that were not currently for sale, but it permitted the continued dissemination of current fares.
- ⊗ Any remaining hypothetical risk of collusive pricing is diminished by availability of Section 201 of the Act and federal and state antitrust laws, upon which the Commission has consistently relied. Reliance on these remedies can mute any remaining risks of collusion without depriving consumers of access to important information.

Consumer information disclosures do not implicate the filed rate doctrine.

- ⊗ Rates provided pursuant to a public disclosure requirement do not meet the definition of a tariff under Supreme Court analysis. The Supreme Court has held that the filed rate doctrine applies only to legally effective tariffs that have been filed with the regulatory agency.
- ⊗ The FCC's Part 61 regulations require that tariffs be "on file with the Commission," "in effect," and "conform to the rules [of Part 61]."
- ⊗ The information that we urge be made publicly available falls far short of a complete "tariff" under this definition. Most important, this information would not be filed with the Commission and would not contain the detailed classifications, practices and regulations that impact rates and charges.